



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.04.2017
(Reserved on 04.04.2017)

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CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP (NPD) (MD) No.1746 of 2014

and

M.P (MD) No.1 of 2014 and CMP (MD) No.2295 of 2017

Muppidathi ... Petitioner
vs.
BalaMurugan ... Respondent

Petition filed under Section 115 CPC against the fair and decreetal order dated 20.06.2014 made in I.A.No.666 of 2012 in O.S.No.411 of 2010 on the file of the Principal Sub Court, Tirunelveli.

For Petitioner : Mr.S.P.Maharajan
For Respondent : Mr.P.Samuel Gunasingh

ORDER

This revision petitioner is the plaintiff in the suit.

2.This Civil Revision Petition is directed against the order passed by the Principal Sub Court, Tirunelveli, allowing the interlocutory application filed under Section 5 of the Limitation Act, condoning the delay of 398 days in filing his application to set aside the ex parte decree passed on 14.06.2011 in O.S.No.411/2010.

3.In the suit filed by the revision petitioner for declaration of title and injunction against the respondent herein, the Trial Court has set the defendant ex parte on 11.04.2011, for not filing the written statement. Thereafter, the Trial Court has proceeded further recording separate evidence and had allowed the suit on 14.06.2011. The defendant who has come to know about the ex parte decree passed against him belatedly, since he could not contact his counsel due to his ill health, had filed an application to set aside the ex parte decree. The Trial Court has accepted the reason for delay and condoned the same. The said order is impugned in this revision petition.

4.The learned counsel for the revision petitioner submitted that the reason stated in Section 5 application is not true and genuine. The mobility of the respondent herein was not crippled as claimed by him. He was active and pursuing the criminal



complaint against the revision petitioner in C.C.No.1 of 2012 during the relevant point of time and the same was proved through Ex.R1 and Ex.R2. In spite of disproving the claim of the respondent about his fake illness, the Trial Court has erroneously allowed the application.

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5.The learned counsel for the revision petitioner vehemently contended that a person who has approached the Court with falsehood and unclean hands, is not entitled for any equitable relief. Since the explanation put forth by the respondent smacks with falsehood, he cannot be allowed to agitate the case much prejudice to the interest of the revision petitioner.

6.Per contra, the counsel for the respondent submitted that the medical history of the respondent has been proved through oral evidence and documents marked as Ex.P1 to P5. The respondent being a chronic diabetic patient, was unable to contact his counsel to file his statement which has lead to passing of decree against him ex parte. Therefore, a fair chance to defend the suit is required, if not, he will be unduly deprived of his property.

7.On perusal of the records, this Court finds that there is a lapse on the part of the respondent in diligently pursuing the case by filing written statement. The reason stated by him for his lapse is plausible and not totally imaginary or untrue. The exhibits P1 to P5 clearly show that he is suffering from diabetic and his lower limb is partially immobilised. Therefore, the Trial Court has allowed the application on payment of cost of Rs.3,000/-

This Court finds no error apparent or illegality in the order of the Trial Court. Therefore, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar

To
The Principal Subordinate Judge,
Tirunelveli.

+1CC to M/S.S.P.Maharajan, Advocate, SR.No. 50833

+1CC to M/S.P.Samuel Gunasingh, Advocate, SR.No. 51050

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